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Sequence Number: 09-32-13
 Notice ID(s): 2075
 File Date: 9/23/13

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Commerce and Insurance, Burial Services Section
Division:	Division of Regulatory Boards
Contact Person:	Benton McDonough
Address:	Office of Legal Counsel 500 James Robertson Parkway Davy Crockett Tower Nashville, Tennessee 37243
Phone:	615-741-8509
Email:	Benton.mcdonough@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243
Phone:	615-741-3449
Email:	Don.Coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Tower, Conference Room 1-B		
City:	Nashville		
Zip:	37243		
Hearing Date:	12/12/2013		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0780-05-09	Cemeteries
Rule Number	Rule Title
0780-05-09-.02	Cemeteries - Definitions

0780-05-09-.14	Community Cemeteries – Request for Exemption
0780-05-09-.15	Community Cemeteries – Granting of Exemption
0780-05-09-.16	Community Cemeteries – Notice of Changes
0780-05-09-.17	Community Cemeteries – Improvement Care Trust Fund
0780-05-09-.26	Cemeteries - Paper Size
0780-05-09-.27	Cemeteries - Changes
0780-05-09-.28	Cemeteries - Professional Conduct

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Substance of Proposed Rules

Chapter 0780-5-9 Cemeteries

Amendments

Rule 0780-05-09-.02 Cemeteries - Definitions is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-05-09-.02 Definitions.

All definitions contained in T.C.A. 46-1-102 apply equally to the rules of this chapter, with the following additions and exceptions:

- (1) "Cemetery owner" means any individual, association, partnership, corporation, limited liability company or other legally cognizable entity that owns or controls cemetery lands or property and conducts the business of a cemetery.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner's designee.
- (3) "Director" means the Executive Director of Burial Services.
- (4) "Master Map" means a cemetery map showing each site for disposition of human remains, including sites for interment, inurnment and entombment.
- (5) "Person" means, according to the context, any individual, association, partnership, corporation, or any other legally cognizable organization or entity.

Authority: T.C.A. §§ 46-1-102 and 46-1-301(b).

Rule 0780-05-09-.14 Community Cemeteries – Request for Exemption is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-05-09-.14 Community Cemeteries – Request for Exemption.

A cemetery may submit a written request for exemption as a community cemetery in typewritten form on 8 ½ x 11 inch paper which shall contain the following information:

- (1) The name and address of the cemetery, or description of its location if it has no street address;
- (2) The name, address, and telephone number of the person in responsible charge of the cemetery who is submitting the application on behalf of the cemetery;
- (3) A description of the historic nature of the cemetery and/or its environs, if applicable;
- (4) The area remaining for future use and (if different) the area remaining for future sales;

- (5) The sale of lots, by number of lots sold per year, over the preceding ten (10) years and the price or prices at which the lots sold; and
- (6) The population of the community normally served by the cemetery.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Rule 0780-05-09-.15 Community Cemeteries – Granting of Exemption is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-05-09-.15 Community Cemeteries – Granting of Exemption.

The Commissioner has the discretion to grant an exemption from the registration requirements of this chapter to a community cemetery after taking into consideration the intent of T.C.A. Title 46, Chapter 1 and factors including, but not limited to, the following:

- (1) The age of the cemetery;
- (2) The remaining area for future use;
- (3) The sale of lots over the preceding ten (10) years and the price at which sold;
- (4) The population of the community normally served by the cemetery;
- (5) Whether a community cemetery association has been formed and such association has been incorporated or has been granted tax exempt status;
- (6) The historic nature of the cemetery and/or its environs;
- (7) Whether a savings account or a trust fund in the name of the cemetery has been established at a financial institution for the maintenance and upkeep of the cemetery;
- (8) The source or sources of funds used for the maintenance and upkeep of the cemetery; and
- (9) Whether the exemption is in the best interest of the citizens of the State of Tennessee.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Rule 0780-05-09-.16 Community Cemeteries – Notice of Changes is amended by deleting subparagraph (1)(f) in its entirety, adding the word "or" to the end of subparagraph (1)(e) and re-lettering the remaining subparagraph accordingly so that, as amended, the rule shall read:

0780-05-09-.16 Community Cemeteries – Notice of Changes.

- (1) With respect to an exempt community cemetery and/or its trust corporation, if applicable, the Commissioner shall be notified in writing within ten (10) days of the effective date of any change in:
 - a. The corporate charter;
 - b. The corporate by-laws;
 - c. The officers and/or directors of the corporation;
 - d. The tax exempt status;
 - e. The corporate registration status with the Tennessee Secretary of State;
 - f. The amount of land dedicated to cemetery purposes; or
 - g. The identity of the controlling party.

- (2) Such notice of change shall be submitted in writing to the Burial Services Section of the Tennessee Department of Commerce and Insurance and shall include copies of all documents affected by such change.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Rule 0780-05-09-.17 Community Cemeteries – Improvement Care Trust Fund is deleted in its entirety.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Chapter 0780-05-09
Cemeteries

New Rules

Rule 0780-05-09-.26 Paper Size
Rule 0780-05-09-.27 Changes
Rule 0780-05-09-.28 Professional Conduct

0780-05-09-.26 Paper Size.

- (1) All documents submitted to Burial Services, including those submitted to auditors pursuant to any audit, shall be on 8.5 X 11 inch paper if the documents are not submitted by electronic means.
- (2) The requirements of this rule may be waived by the Director.

Authority: T.C.A. §§ 46-1-301(b).

0780-05-09-.27 Changes.

In addition to any other requirement of the rules promulgated by the commissioner or any statute pertaining to the operation of a cemetery company, the cemetery company shall report the following changes in writing to the commissioner within ten (10) days of the effective date of the change:

- (1) Change in the identity of person responsible for compliance with cemetery statutes;
- (2) The conviction of any partnership, corporation, association, employee, owner, director, principal, manager, member, stockholder with a majority ownership interest, or other person who has any ownership interest in, or has any control over, the financial operations of a cemetery for a misdemeanor involving fraud, dishonesty or moral turpitude or a conviction of any felony.

Authority: T.C.A. §§ 46-1-301(b) and 46-1-306(a)(8)

0780-05-09-.28 Professional Conduct.

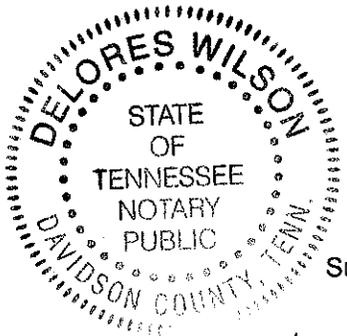
The commissioner may deem a cemetery company, or any cemetery operator, to have violated the rules of professional conduct for:

- (1) Failure to treat members of the public in a respectful manner.
- (2) Failure to perform legal obligations under any contract with a purchaser.
- (3) Failure to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.
- (4) Selling an interment right or interment site that the cemetery company or cemetery operator knew or should have known had been purchased previously by another customer.
- (5) Providing any false or misleading statement on any reports submitted to the commissioner.

- (6) Selling or offering to sell any contract in violation of the Tennessee Pre-paid Funeral Benefits Act.
- (7) Any person who has been assessed a fee pursuant to statute or rules of Burial Services, and which fee is currently due, shall submit payment within the time provided by written notice.
- (8) Any registrant, upon receiving notice that a complaint has been opened against the registrant, shall respond within the time specified in the notice. Provided, the director may grant a request for extension submitted within the period of time stated in the original notice.

Authority: T.C.A. §§ 46-1-301(b), 46-1-206(c) and 46-1-306(a)(7).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: September 20, 2013

Signature: Robert Benton McDonough

Name of Officer: Robert Benton McDonough

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: September 20, 2013

Notary Public Signature: Delores Wilson

My commission expires on: August 23, 2016

9/23/16

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Filed with the Department of State on: 9/23/13

Tre Hargett
Secretary of State

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